

## Department of the Navy, DoD

## § 701.41

Agency will publish a correction in the FEDERAL REGISTER at a later date.

### § 701.41 Definitions.

The following definitions set forth the parameters for determining FOIA fees:

(a) *Direct costs.* Direct costs means those expenditures a naval activity actually incurs in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the employee's basic rate of pay plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. Not included are overhead expenses such as costs of space, heating, or lighting the facility where records are stored.

(b) *Search time.* Search time includes all time spent looking for material responsive to a request and a page-by-page or line-by-line identification (if necessary) of material in the document to determine if it, or portions thereof, are responsive to the request. Naval activities should ensure that searches are efficient and completed in the least expensive manner to minimize costs to the naval activity and the requester. For example, naval activities should not do a line-by-line search when duplicating an entire document containing responsive information would be less expensive and quicker to comply with the request. Time spent reviewing documents to determine whether to apply one or more of the statutory exemptions is not search time, but review time.

(c) *Duplication.* Duplication refers to the process of making a copy of a document in response to a FOIA request. Copies can be paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc). Every effort will be made to ensure that the copy provided is in a form reasonably usable by requesters. If copies are not clearly usable, the requester will be notified that their copy is the best available and the agency's master copy will be made available for review upon appointment. For duplicating of computer tapes and audiovisuals, the cost, including the operator's time

shall be charged. If a naval activity estimates that assessable duplication charges may exceed \$25, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such notice shall offer the requester the opportunity to confer with naval personnel to reformulate the request to meet his or her needs at a lower cost.

(d) *Review.* Review time refers to examining documents responsive to a FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include time spent resolving general legal or policy issues on applying the exemptions. Charges may be assessed only for the initial review. Naval activities may not charge for reviews during an administrative appeal of an exemption already applied. Records or portions of records withheld in full under an exemption subsequently determined not to apply, may be reviewed again to determine the applicability of other exemptions not previously considered and the costs for such a subsequent review could be assessed.

(e) *Commercial use request.* A commercial use request is a request from or on behalf of one seeking information for a use or purpose that furthers the commercial, trade, or profit interest of the requester. In determining whether a requester belongs to this category, naval activities must determine the requester's use of the documents requested. Naval activities should seek additional clarification before assigning the request to a specific category when doubting the intended use of the requester, or where the use is not clear from the request itself.

(f) *Educational institution.* An educational institution is a preschool, public or private elementary or secondary school, institution of graduate higher education, institution of undergraduate higher education, institution of professional education, and an institution of vocational education operating a program(s) of scholarly research.

(g) *Non-commercial scientific institution.* A non-commercial scientific institution is operated solely for conducting scientific research the results of which are not intended to promote any particular product or industry and not operated on a "commercial" basis.

(h) *Representative of the news media.* Representative of the news media is a person actively gathering news for an entity organized and operated to publish or broadcast news to the public. "News" means information about current events or of current interest to the public. Examples of news media entities include television or radio station broadcasting to the public at large and publishers of periodicals when qualifying as disseminators of "news" who make their products available for purchase or subscription by the general public. Those examples are not all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services) alternative media would be included in this category. "Free-lance" journalists may be considered as working for a news organization if they can demonstrate a basis for expecting publication by that organization, even if not actually employed. Proof may be by publication contract, but naval activities may also look to the requester's past publication record in making this determination. Representatives of the news media do not include private libraries, private repositories of Government records, or middlemen such as information vendors or data brokers.

(i) *All other requesters.* All other requesters refers to persons who do not qualify as an educational institution, non-commercial scientific institution, representative of the news media, or commercial use requester. An example is a nonprofit organization.

#### § 701.42 Application.

(a) *Commercial requesters.* When records are requested for commercial use, fees shall be assessed to recover reasonable standard charges for document search, review, and duplication. Requesters must reasonably describe the records sought. When naval activities review a request for documents for commercial use, they should assess

charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters, are not entitled to 2 hours of free search time and 100 free pages of reproduction of documents. However, fees totaling \$15 or less must be waived. Commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. Because use of the requested material is the exclusive determining criteria, a commercial enterprise may make a request that is not for commercial use. It is also possible that a nonprofit organization could make a request for commercial use. Such situations must be addressed on a case-by-case basis.

(b) *Educational institution requesters.* When a request is made by an educational institution whose purpose is scholarly research fees shall be limited to reasonable standard charges for document duplication (excluding charges for the first 100 pages). Requesters must reasonably describe the records being sought and must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly research.

(c) *Non-commercial scientific institution requesters.* When the request is made by a non-commercial scientific institution whose purpose is scientific research fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages). Requesters must reasonably describe the records sought and must show that the request is being made under the auspices of a qualifying institution and that records are not sought for commercial use, but in furtherance of scientific research.

(d) *Representatives of the news media.* (1) When the request is made by a representative of the news media, fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages). Requesters must reasonably describe the records sought.

(2) Representatives of the news media must meet the criteria defined in paragraph (h) of § 701.41, and the request